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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 768

THE BOYS MARKETS, INC.,
Petitioner,

vs.

RETAIL CLERK'S UNION, LOCAL 770,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF OF GENERAL ELECTRIC COMPANY, AMICUS CURIAE

STATEMENT OF INTEREST

General Electric Company, one of the largest employers in the United States, has a total employment in excess of 310,000 persons. It is engaged in the manufacture of industrial electrical equipment, products for national defense, consumer electrical appliances, electronic equip-

ment, medical equipment, jet engines, and in addition, an almost endless array of electrical items and machinery.

General Electric has over 250 manufacturing plants located in some 33 states and territories of the United States. More than 100 unions are parties to collective bargaining agreements with the Company. Virtually all such agreements contain "no strike" provisions which in varying degrees restrict the strike activity of the members of the bargaining groups.

During the term of the various collective bargaining agreements to which it is a party, General Electric is confronted too frequently with work stoppages and strikes in violation of valid "no strike" contract provisions. The most effective means of stopping contract breaches of this nature and of preventing labor organizations from resorting to strike activity prohibited by the contract are restraining orders and injunctions sought in state courts due to the prohibition against federal courts granting injunctive relief pronounced by this court in *Sinclair Refining Co.* v. *Atkinson*, 370 U.S. 195 (1962). Typically, actions filed in state court for injunctive relief are removed to federal district court by the defendant union.

The holdings in *Sinclair* and *Avco Corp.* v. *Aero Lodge No. 135, International Assn. of Machinists and Aerospace Workers*, 390 U.S. 557 (1968), have resulted in confusion and uncertainty in two major respects in removed cases. First, is the *Sinclair* mandate so broad as to compel a federal district court to dissolve a state granted injunction upon removal of a suit under Section 301(a) of the Taft-Hartley Act to district court? Secondly, is the desire for uniformity in the application of our national labor policy paramount to allowing a state court to exercise its recognized concurrent jurisdiction in Section 301(a) suits by

granting injunctive relief which is unavailable in federal district court by reason of the *Sinclair* holding?

Lack of a definitive statement from this court regarding the scope of *Sinclair* has resulted in diverse rulings among state courts, as well as federal courts. The inconsistent court rulings in turn lead to instability in industrial relations both for General Electric and other employers whose business activities also affect commerce.

General Electric seeks a ruling from this Court that *Sinclair* no longer has efficacy, and therefore that federal courts are not proscribed from granting initially injunctive relief to prevent violations of "no strike" provisions in collective bargaining agreements. But at the very least the Court is urged to clearly delimit *Sinclair* so that federal district courts will not be led to conclude that they have no alternative but to dissolve injunctions granted by state courts upon removal of Section 301(a) suits to district court, and moreover so that state courts will know what power they have to grant injunctive relief in such suits.

ARGUMENT

The principal question presented for review is whether or not Section 4 of the Norris-LaGuardia Act prohibits a federal district court from granting injunctive relief in an action brought under Section 301 of the Taft-Hartley Act seeking to enjoin a non-violent strike being conducted by a certified union representative in violation of a "no strike" clause in a collective bargaining agreement. Resolution of this question necessarily involves a re-examination of this Court's decision in *Sinclair Refining Co.* v. *Atkinson*, 370 U.S. 195 (1962), in light of the current national labor policy as reflected by existing statutory and case law.

This case presents another question of considerable import—namely, whether or not in a Section 301 action injunctive relief issued by a state court remains in full force and effect in federal court after removal in the absence of an exercise of discretion by the federal district court in modifying or dissolving such relief. This latter question concerns the scope, as well as the present validity, of the *Sinclair* holding.

The question of whether a federal district court has the power to issue a restraining order or injunction in an action under Section 301 of the Taft-Hartley Act arises in cases removed to district court under 28 U.S.C. Section 1441(a) and (b), as well as in cases instituted in district court. Prior to removal of a Section 301 suit to district court, a plaintiff employer may seek and obtain interlocutory injunctive relief—whether in the form of a temporary restraining order or a temporary injunction or both. Where the state court has granted injunctive relief to an employer, upon removal of the action, the district court is confronted not only with the question of whether to grant further injunctive relief but also with the question of whether the injunctive relief granted by the state court remains in force and effect.

The case at bar, being a removed case, involves a district court order[1] which did two things: (1) restrained and enjoined the union from striking in violation of the "no strike" provision in the collective bargaining agreement between the parties and (2) overruled the union's motion to quash the temporary restraining order issued by the state court before removal.[2]

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1. Appendix, pages 84-88.

2. The Court of Appeals apparently either overlooked or ignored or attached little, if any, significance to that portion of the district court's order overruling the union's motion to quash. No reference is made in the opinion of the Court of Appeals to the

In contrast, *Sinclair* was initiated in federal district court. Thus, in *Sinclair*, the district court was confronted only with the question of whether it had power to grant original injunctive relief.

Initially, the propriety of the district court's action in overruling the motion to quash will be discussed, and thereafter the district court's power to restrain and enjoin the union in the face of *Sinclair* will be covered.

I.

A. The Granting of Injunctive Relief by a State Court in a Section 301(a) Suit Against Strike Activity in Violation of a "No Strike" Clause in a Collective Bargaining Agreement Is Not Prohibited by Section 4 of the Norris-LaGuardia Act or by the Current National Labor Policy.

Prior to deciding whether injunctions issued by state courts remain in effect when a Section 301 suit is removed to district court, it is necessary to determine whether or not state courts are prohibited from granting injunctive relief in such suits to prevent violations of "no strike" clauses.[3] While we have a strong conviction to the contrary, it will be assumed for the moment that district courts are without power to grant injunctive relief in an action under Section 301 of Taft-Hartley because of the prohibition contained in Section 4 of Norris-LaGuardia.

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fact that the motion to quash was overruled. Further, the Court of Appeals stated,

> "The *sole* question on this appeal is whether the court below had justification to enjoin a strike where that strike is in violation of a no-strike clause." (Emphasis added.) 416 F.2d 368 at 369.

However, the effect of the overruling of the union's motion to quash was to continue the temporary restraining order in force.

3. This court has recognized that this question is an open one. *Avco Corp.* v. *Aero Lodge No. 135, International Assn. of Machinists and Aerospace Workers*, 390 U.S. 557 (1968); *N.L.R.B.* v. *C. & C. Plywood Corp.*, 385 U.S. 429, n. 15 (1967); *Charles Dowd Box Co., Inc.* v. *Courtney*, 368 U.S. 502 (1962).

Section 4 of the Norris-LaGuardia Act[4] provides as follows:

> "*No court of the United States* shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of [certain enumerated acts]." (Emphasis added.)

Section 13 of the same Act[5] defines the phrase "court of the United States" in the following manner:

> "When used in this chapter, and for the purposes of this chapter— . . .(d) The term 'court of the United States' means any court of the United States whose jurisdiction has been or may be conferred or defined or limited by Act of Congress, including the courts of the District of Columbia."

In view of the definition just quoted, it is clear that the provisions of the Norris-LaGuardia Act do not expressly prohibit state courts from issuing injunctions in actions proceeding under Section 301(a) of Taft-Hartley.

In 1962 the Supreme Court held in the case of *Sinclair Refining Co.* v. *Atkinson*, 370 U.S. 195, *supra*, that federal courts are precluded from issuing injunctions in Section 301 suits because of the provisions of Section 4 of the Norris-LaGuardia Act. The *Sinclair* holding, when considered in light of the Supreme Court's decision in *Local 174, Teamsters, Chauffeurs, Warehousemen & Helpers of America* v. *Lucas Flower* Co., 369 U.S. 95 (1962), stressing the need for uniformity in conjunction with our national labor policy, has caused some concern with regard

4. 29 U.S.C. Section 104.
5. 29 U.S.C. Section 113.

to the desirability of a state court enjoining a union from conducting a peaceful strike in violation of a "no strike" clause in a collective bargaining agreement. In short, does the need for uniformity in the application of our national labor policy dictate that the remedies available in state and federal courts in Section 301(a) suits be the same?[6]

The need for uniformity came into focus when this court concluded in *Textile Workers Union of America* v. *Lincoln Mills of Ala.*, 353 U.S. 448 (1957), that "the *substantive* law to apply in suits under Section 301(a) is federal law, which the courts must fashion from the policy of our national labor laws."[7] (Emphasis added.) Later decisions of this Court have emphasized that federal *substantive* law controls suits under Section 301(a) of Taft-Hartley.[8] The desire for uniformity has not been the decisive factor in every case, however, as is illustrated by *International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL-CIO* v. *Hoosier Cardinal Corp.*, 383 U.S. 696 (1966), which was essentially an action brought by a union for damages for breach of a collective bargaining agreement. The Court held in that case as follows:

". . . since no federal provision governs, we hold that the timeliness of a Section 301 suit, such as the pres-

6. The Supreme Court reserved decision on this question in *Avco Corp.* v. *Aero Lodge No. 135, International Assn. of Machinists and Aerospace Workers*, 390 U.S. 557, n. 4, *supra*. There is a divergence of opinion on this question between the Courts of Appeals for the third and sixth circuits. *Am. Dredging Co.* v. *Local 25*, 338 F.2d 839 (3 C. 1964); *Avco Corp.* v. *Aero Lodge No. 735, International Assn. of Machinists and Aerospace Workers*, 376 F.2d 342 (6 C. 1967).

7. 353 U.S. at 456.

8. *Local 174, Teamsters, Chauffeurs, Warehousemen & Helpers of America* v. *Lucas Flower Co.*, 369 U.S. 95, *supra*; *Avco Corp.* v. *Aero Lodge No. 135, International Assn. of Machinists and Aerospace Workers*, 390 U.S. 557, *supra*.

ent one, is to be determined, as a matter of federal law, by reference to the appropriate state statute of limitations."[9]

The court in *Hoosier Cardinal* concluded:

> "The need for uniformity, then, is greatest where its absence would threaten the smooth functioning of those consensual processes that federal labor law is chiefly designed to promote—the formation of the collective agreement and the private settlement of disputes under it."[10]

It is submitted that the need for uniformity in applying our national labor policy is not significantly hindered by allowing state courts to issue either temporary restraining orders or temporary or permanent injunctions in Section 301(a) suits unless such injunctive relief unduly prejudices or discriminates against the exercise of a substantive right conferred by Section 301(a).

Where a state issued injunction has the effect of encouraging or even compelling the party enjoined to resort to the procedures for the handling of grievances and arbitration set forth in a collective bargaining agreement, rather than methods of self-help, it is strongly urged that no substantial conflict occurs with the national labor policy which is "to promote industrial stabilization through the collective bargaining agreement."[11]

Due to the fact that it has been established that state and federal courts have concurrent jurisdiction over Section 301(a) suits,[12] some conflicts are destined to occur

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9. 383 U.S. at 704. The Court declined to characterize statutes of limitations as either substantive or procedural or as primary or remedial. *Id.* at 703, n. 4.

10. *Id.* at 703.

11. *United Steelworkers of America* v. *Warrior and Gulf Navigation Co.*, 363 U.S. 574 (1960), at 579.

12. *Charles Dowd Box Co., Inc.* v. *Courtney*, 368 U.S. 502, *supra*.

in the application of our national labor policy.[13] No doubt the number of such potential conflicts has been greatly minimized by the holding in *Avco Corp.* v. *Aero Lodge No. 135, International Assn. of Machinists and Aerospace Workers,* 390 U.S. 557, *supra,* that a Section 301 action may be removed to federal district court, it being within the "original jurisdiction" of district courts within the meaning of 28 U.S.C. Section 1441(a) and (b). However, in the present case, there is no legitimate question of conflict in the application of the federal labor policy by a dual court system; instead, the issue is whether state courts should be permitted to grant more complete relief by issuing restraining orders and injunctions in Section 301 suits against violations of "no strike" clauses.

The argument advanced here is buttressed by the majority opinion in *McCarroll* v. *Los Angeles County Dist. Council of Carpenters,* 49 Cal. 2d 45 (315 P.2d 322) (1957). There Justice (now Chief Justice) Traynor of the California Supreme Court dealt with the question under discussion in the following manner:

> "Section 301 of the Labor Management Relations Act does not embody any policy that requires a state court enforcing rights created by that section to withhold injunctive relief. The principal purpose of section 301 was to facilitate the enforcement of collective bargaining agreements by making unions suable as entities in the federal courts, and thereby to

13. "It is implicit in the choice [respecting the enforcement of collective bargaining agreements] Congress made that diversities and conflicts may occur, no less among the courts of the eleven federal circuits, than among the courts of the several states, as there evolves in this field of labor managament relations that body of federal common law of which Lincoln Mills spoke. But this not necessarily unhealthy prospect is no more than the usual consequence of the historic acceptance of concurrent state and federal jurisdiction over cases arising under federal law. To resolve and accommodate such diversities and conflicts is one of the traditional functions of this Court." *Id.* at 514.

remedy the one-sided character of existing labor legislation. See United Packinghouse Workers v. Wilson & Co., D.C.N.D. Ill., 80 F.Supp. 563, 568. We would give altogether too ironic a twist to this purpose if we held that the actual effect of the legislation was to abolish in state courts equitable remedies that had been available, and leave an employer in a worse position in respect to the effective enforcement of his contract than he was before the enactment of section 301.

"Nothing in the nature of the rights created by section 301 requires that injunctive relief be denied in their enforcement. Such relief would of course not impair any federal contract right, nor would it expand it in conflict with any policy that we have been able to discern in the statute. To the contrary, the principal purpose of the statute is to encourage the formation and effective enforcement of collective bargaining agreements. See Textile Workers v. Lincoln Mills of Alabama, 77 S.Ct. 912. The restriction on the remedies available in the federal courts arises not from any policy in the Labor Management Relations Act itself but from the Norris-LaGuardia Act, and the policy of that statute as we have seen is confined to the federal courts. See Associated Tel. Co. v. Communication Workers, D.C.S.D. Cal., 114 F.Supp. 334, 341; Philadelphia Marine Trade Assn. v. International Longshoremen's Assn., 382 Pa. 326, 115 A.2d 733, 736, certiorari denied, 350 U.S. 843, 76 S.Ct. 84, 100 L.Ed. 751; Wollett and Wellington, Federalism and Breach of the Labor Agreement, 7 Stan. L.Rev. 445, 456-460.

"Finally, there is no invariable requirement, implicit in the federal system, that a state court enforcing a federal right must not go beyond the remedies available in a federal court. Uniformity in the determination of the substantive federal right itself is no doubt a necessity, but such uniformity is not threat-

ened because a state court can give a more complete and effective remedy."[14]

The court should bear in mind that procedural safeguards exist against the unwarranted issuance of injunctive relief by a state court. Within the framework of many state procedural systems while a temporary restraining order may issue ex parte, a hearing upon notice on the application for an interlocutory injunction must be held promptly.[15] If the action is removed to district court pursuant to the provisions of 28 U.S.C. Section 1441 (a) and (b), the district court may modify or dissolve any restraining order or injunction issued by the state

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14. 315 P.2d at 332.

15. E.g., Section 65 of the Ga. Civil Practice Act, as amended (Ga. Code Ann. Section 81A-165), provides in relevant part as follows:

"Section 65. Injunctions.—

"(a) Preliminary; notice.—No interlocutory injunction shall be issued without notice to the adverse party.

"(b) Temporary restraining order; notice, hearing; duration.—No temporary restraining order shall be granted without notice to the adverse party unless it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before notice can be served and a hearing had thereon. Every temporary restraining order granted without notice shall be indorsed with the date and hour of issuance; shall be filed forthwith in the clerk's office and entered of record; and shall expire by its terms within such time after entry, not to exceed 30 days, as the court fixes, unless the party against whom the order is directed consents that it may be extended for a longer period. In case a temporary restraining order is granted without notice, the motion for an interlocutory injunction shall be set down for hearing at the earliest possible time and takes precedence over all matters except older matters of the same character; and when the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for an interlocutory injunction, and if he does not do so, the court shall dissolve the temporary restraining order. On two days' notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move its dissolution or modification, and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require. . . ."

court in the exercise of discretion conferred upon it by the provisions of 28 U.S.C. Section 1450, if the merits of the case warrant such action. In any event this Court can review the action of either state or federal courts in issuing injunctive relief in a Section 301 (a) suit.

Still assuming *arguendo* that federal courts have no power to issue injunctions in Section 301 actions by reason of the provisions of Section 4 of the Norris-LaGuardia Act, it follows nevertheless that state courts are not prohibited by either Section 4 of Norris-LaGuardia or our national labor policy from granting injunctive relief against a strike[16] in violation of a "no strike" provision in a collective bargaining agreement. A contrary conclusion would have the effect of denying to an employer a remedy available to him prior to the passage of the Taft-Hartley Act.

B. Upon Removal of a Section 301(a) Suit to Federal District Court, an Injunction Granted by a State Court in Such a Suit Continues in Force by Operation of Law until Modified or Dissolved by the District Court in a Proper Exercise of Discretion under 28 U.S.C. Section 1450, Notwithstanding Sinclair.

The Court's attention is directed now to the question of whether an injunction or restraining order issued by a state court remains in effect upon removal of a Section 301 suit to district court.[17] Whenever any action has been removed from state court to district court under 28

16. Excluded from consideration are strikes involving repeated acts of violence, destruction or damage to property, violation of local law which does not involve at the same time an unfair labor practice within the meaning of the National Labor Relations Act, as amended, or otherwise coming within the purview of a state's police power.

17. No decision was made on this question in *Avco Corp.* v. *Aero Lodge No. 135, International Assn. of Machinists and Aerospace Workers*, 390 U.S. 557, n. 4, *supra*.

U.S.C. Section 1441(a) and (b), it is provided in part in 28 U.S.C. Section 1450 as follows:

> "All injunctions, orders, and other proceedings had in such action prior to its removal shall remain in full force and effect until dissolved or modified by the district court."

Professor Moore in his treatise on federal practice states that the portion of 28 U.S.C. Section 1450 just quoted "provides that injunctions, orders and other proceedings, which include pending motions, had in the state court prior to removal are not affected by removal; in turn, the statute grants the federal court full power to dissolve, modify or vacate pre-removal orders of the state court that have not become conclusive upon the parties."[18]

In *Duncan* v. *Gegan*, 101 U.S. 810 (1879), this Court held the following:

> "The transfer of the suit from the State Court to the Circuit Court did not vacate what had been done in the State Court previous to the removal. The Circuit Court, when a transfer is effected, takes the case in the condition it was when the State Court was deprived of its jurisdiction. The Circuit Court has no more power over what was done before the removal than the State Court would have had if the suit had remained there. It takes the case up where the State Court left it off."

In several instances lower federal courts have held that upon removal of a case to district court an injunction issued by a state court which a federal court would have

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18. 1A Moore's Federal Practice, Par. 0.168 (4.-5) (2d ed. 1965).

been prohibited by federal statute[19] from granting remains in effect until modified or dissolved by the district court.[20]

Where a state court has granted an injunction or restraining order or both in a Section 301 suit, upon removal of the case to district court such injunctive relief continues in full force and effect by operation of the above-quoted provisions of 28 U.S.C. Section 1450 until such time as the district court in a proper exercise of discretion dissolves or modifies the state granted injunctive relief. Assuming once again for the purpose of argument that Section 4 of Norris-LaGuardia prohibits a federal court in a Section 301 suit from issuing an injunction against a strike in violation of a "no strike" provision in a collective bargaining agreement, Section 4 of Norris-LaGuardia has application only in those instances where the district court seeks to grant an injunction or restraining order in the first instance.[21]

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19. In each of these cases the federal statute prohibiting the district court from granting an injunction was Rev. St. Section 720 (a predecessor of 28 U.S.C. Section 2283) which read as follows:

> "The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a state, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy."

20. *Smith* v. *Schwed*, 6 Fed. 455 (C.C.W.D. Mo. 1881), *app. dismissed* 106 U.S. 188; *Perry* v. *Sharpe*, 8 Fed. 15 (C.C.S.D. Ohio 1881); *Eureka & K.R.R. Co.* v. *Cal. & N. Ry. Co.*, 103 Fed. 897 (C.C.N.D. Cal. 1900), *aff'd* 109 Fed. 509 (9 C. 1901).

21. The Court of Appeals for the Fifth Circuit reached a contrary conclusion in *General Electric Co.* v. *Local Union 191, Affiliated with International Union of Electrical, Radio, and Machine Workers (AFL-CIO)*, 413 F.2d 964 (5 C. 1969). There the Court of Appeals concluded:

> "We are of the view that the District Court did not err in dissolving the injunction, not because either *Sinclair*, supra, or *Avco*, supra, explicitly dictates that result, but because, in our view, once this case was removed, a failure to dissolve the state court injunction would have been tantamount to issuance of that same injunction by the federal district court, which, as we have just noted, would be proscribed by the Norris-LaGuardia Act under the *Sinclair* decision."

It is submitted that this result is erroneous because injunctions issued by state courts continue in force by operation of law upon removal to district court.

II.

Sinclair Is Not in Accord with Our Current National Labor Policy and Should Not Be Followed.

Since 1962, when *Sinclair* was decided, the undesirable effect of that decision upon the collective bargaining process has become manifest both at the bargaining stage and in the enforcement of the rights and obligations created by the collective bargaining agreement.

The effectiveness of the "no strike" clause was diluted considerably by *Sinclair* because it removed one of the primary means of enforcement of that clause. Consequently, the "no strike" clause presently does not constitute a major inducement to an employer to enter into a collective bargaining agreement. While a "no strike" clause still will support a claim by an employer for damages for breach thereof asserted either in an action at law[22] or through arbitration,[23] depending on the provisions of the collective bargaining agreement, neither means of seeking damages is an adequate substitute for an injunction against a strike which is causing irreparable disruption of an employer's business. As a practical matter, the delay necessarily attendant upon realizing a satisfaction of any judgment or arbitrator's award for damages against a union can have a crippling effect upon a company's financial status, especially where the union is unable to fully satisfy the judgment or award because of insufficient funds. Also, frequently an employer is compelled to forego his claim for damages in order to restore some semblance of industrial tranquility.

The Supreme Court has recognized the collective bargaining agreement as "an effort to erect a system of in-

22. *Atkinson* v. *Sinclair Refining Co.*, 370 U.S. 238 (1962).

23. *Drake Bakeries, Inc.* v. *Local 50, Am. Baking & Confectionery Workers International, AFL-CIO*, 370 U.S. 254 (1962).

dustrial self-government."[24] But such efforts will not be fruitful and indeed will be frustrated unless appropriate means of enforcement are available to compel the parties to the agreement to adhere to the terms thereof rather than resorting to methods of self-help.

In *United Steelworkers of America* v. *Am. Mfg. Co.*, 363 U.S. 564 (1960), this Court stated at page 567:

> "In our role of developing a meaningful body of law to govern the interpretation and enforcement of collective bargaining agreements, we think special heed should be given to the context in which collective bargaining agreements are negotiated and the purpose which they are intended to serve. See Lewis v. Benedict Coal Corp., 361 U.S. 459, 468, 80 S.Ct. 489, 495, 4 L.Ed.2d 442."

In performing this role the Supreme Court must determine the present relative weight of Norris-LaGuardia in the statutory scheme upon which our national labor policy is based. The need for further development and refinement of the collective bargaining process necessitates that Norris-LaGuardia be given a lesser role than was assigned to it by the majority of the court in *Sinclair* in 1962.

It is strongly urged that the goal of achieving industrial stabilization through the collective bargaining agreement can best be achieved by harmonizing Norris-LaGuardia with Taft-Hartley so as to specifically authorize federal district courts, as well as state courts, to enjoin a strike in violation of a "no strike" clause in a collective bargaining agreement. The *Sinclair* holding does not comport with our present federal labor policy, and therefore it should not be permitted to stand as a precedent.

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24. *United Steelworkers of America* v. *Warrior and Gulf Navigation Co.*, 363 U.S. 574, *supra*, at p. 580.

CONCLUSION

For the reasons stated hereinbefore, it is strongly urged that the Court of Appeals for the Ninth Circuit erred in reversing the judgment of the district court enjoining the union strike and remanding the case for further proceedings. Accordingly, this court should reverse the judgment of the Court of Appeals with direction to affirm the action of the district court both in restraining and enjoining the union and in overruling the union's motion to quash the state court's temporary restraining order.

Respectfully submitted,

BRANCH AND SWANN

JOHN E. BRANCH

JAMES PULM SWANN, JR.

JOHN K. DUNLAP

February 24, 1970